

Date: September 11, 2013

To: Thomas J. Bonfield, City Manager
Through: Wanda S. Page, Deputy City Manager
From: David Boyd, Finance Director
Subject: Liability Claims Settlement Authority Delegation

Executive Summary

Pursuant to City Council Resolution #8810 passed in 2001, the City Manager currently has the authority to settle claims against the City for amounts below \$25,000.00. Since that time the cost of claims has increased while the settlement authority has not been adjusted upwards. In an attempt to ease the claims administration process and to be consistent with other authority provided to the City Manager in the contracting arena, the proposed resolution increases the City Manager's authority to settle liability claims to \$50,000.00 and makes other technical adjustments to the current resolution. The proposed action does not affect the Manager's contracting authority or ability to settle workers compensation claims.

Recommendation

That the City Council adopt a resolution providing for the handling of claims; authorizing the City Manager to compromise or settle claims against the City and its officers and employees; and authorizing tolling agreements with respect to claims by or against the City and its officers and employees.

Background

In October 2001, City Council adopted Resolution #8810 which established the City Manager's authority to settle claims against the City at \$25,000.00. In addition, City Council also adopted Resolution #8809 which provides unlimited authority for the City Manager to settle workers compensation claims against the City.

The City currently contracts with the North Carolina League of Municipalities for claims adjusting services for liability related claims. In addition, the City Attorney's Office handles claims against the City that are not of a routine nature or for which the claimant has obtained outside legal counsel. The City's Risk Management Division of the Finance Department coordinates these activities, acquires insurance on behalf of the City, provides other loss control services to City Departments and serves as an initial point of contact for claimants. The Risk Management Division meets with the City Manager on a routine basis to keep him apprised of all current claims activity and to provide updates on claims of interest. The administration provides the detail of all liability claims payments to the City Council in a quarterly report.

Liability claims are paid from the City's Risk Fund which is an internal service fund established for this purpose. The Risk Fund receives monies to pay claims from amounts transferred from other funds on an annual basis. The amounts paid by each fund are

established by an actuarial report that is prepared annually. Any claims that would be settled pursuant to the increased authority proposed in this resolution would be paid from the Risk Fund and would not exceed the total annual appropriation adopted by the City Council in the annual operating plan for the fund unless otherwise authorized by the City Council.

Issues and Analysis

The proposed resolution repeals existing resolution #8810 and increases the City Manager's authority to settle claims against the City from \$25,000.00 to \$50,000.00. Costs have increased since the adoption of resolution #8810 while the limits have not. The proposed change in settlement authority will provide the administration with additional flexibility to dispose of claims more expeditiously while still keeping the City Council informed of these actions through quarterly reporting.

The current resolution authorizes the City Manager to settle a claim only if it is found to be valid. That requirement forbids settling a claim that is probably or even likely invalid. However, the cost and time of defending a claim, and the risk that our opinion of validity may be different from a judge's opinion, could make it prudent to pay a reasonable amount to settle some claims that in the City's opinion are not valid. The proposed resolution broadens the City Manager's authority, to allow the City Manager to settle a claim after considering all relevant factors. This authority is consistent with City Council Resolution #8809 which applies to workers compensation claims.

In addition to the authority described above, the resolution explicitly permits the City Manager to enter into tolling agreements. Sometimes negotiations over a claim occur near the deadline for filing a lawsuit. A tolling agreement postpones the deadline so that negotiations can continue without the need to sue merely to maintain the right to sue. If the negotiations are unsuccessful and the extended period allowed by the tolling agreement has not expired, a lawsuit can be filed.

The proposed resolution also removes unneeded words and makes minor text changes.

Alternatives

The City Council could choose to leave the settlement authority at its current level of \$25,000.00 and continue as has been the practice since 2001 or choose an amount higher than the \$50,000.00 recommended level if the intent is to provide even greater flexibility to the administration.

Financial Impact

This action has no financial impact.

SDBE Summary

Not Applicable

Attachments

Resolution